

# Representing Canadian justice: legal iconography and symbolism at the Supreme Court of Canada

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## Abstract

*This paper examines the intersection between a distinctly Canadian legal culture and the legal architecture, symbolism and iconography of its Supreme Court building in Ottawa. I begin from the premise originally put forward in Resnik and Curtis's study of legal architecture. I proceed with an analysis of the Court's history, aesthetic and decorative elements, geography and design, artistic and legal vision of the architect, and the social, political and historical contexts in which it was created, as well as key legal and constitutional concepts embodied by the Court's legal architecture and a comparative analysis with another courthouse in Montreal (the Édifice Ernest Cormier). The paper demonstrates that the challenges of creating a courthouse that reflects the legal traditions and evolving social norms as well as the aspirations of a dynamic, democratic and pluralistic society are almost impossible. It remains a problematic question whether the image of justice that the Court evokes to the observer is the most 'eloquent three dimensional representation of the role the Supreme Court has assumed in the life of the nation' (Canada and Supreme Court, 2000, p. 207).*

'Art Deco is like a diamond. . . its lines are precise perfect.' (Supreme Court Justice Antonio Lamer)

## I. Introduction

In her innovative work on the subject of legal architecture, British legal scholar Linda Mulcahy examines the question of architecture in the context of British history and contemporary legal institutions, and speculates that the lawyers' obsession with the written word accounts for their lack of analysis of their physical surroundings. 'We frequently assume that if all else is equal that judgment given in one place would be the same as judgment reached in another' (Mulcahy, 2011, p. 3).

The subject of the specific meta-legal and constitutional implications of the iconography, symbolism, architecture and aesthetics of the Supreme Court of Canada has never (to the best of my knowledge) been broached by a Canadian legal scholar. Hence, the focus of this paper will be the Supreme Court of Canada in Ottawa, designed by French Canadian architect Ernest Cormier.

The goal of this analysis is to bridge the world of aesthetic and architectural representations of the law, primarily in the form of the constitutional courthouse of Canada, with the legal culture<sup>1</sup>

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1 With respect to the concept of legal culture, see David Nelken's definition: 'Legal culture, in its most general sense, is one describing relatively stable patterns of oriented social behavior and attitudes. The identifying elements of legal culture range from facts about institutions such as the number and role of lawyers or the way judges are appointed and controlled, to various forms of behaviour such as litigation or prison rates, and at the other extreme, more nebulous aspects of ideas, values, aspirations and mentalities. Like culture itself, legal culture is about who we are, not just what we do' (2004, p. 107).

and values that inspired and influenced its design. As Mulcahy and others have observed, constitutional courthouses seem to possess a quasi-religious significance, being an extension of what has become in many societies (especially developed liberal democracies with strong rule-of-law traditions like Canada's), the secular approximation of a religious institution and a deliberate attempt to physically manifest the legal culture of a given state or legal jurisdiction (Mulcahy, 2011, p. 9; Spaulding, 2012, p. 13).

I will begin from the premise originally put forward in Judith Resnik and Dennis Curtis's monumental study of legal iconography and symbolism in legal architecture: *Representations of Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*. Their principal thesis is that 'the forms in which governments represent themselves provide windows into their aspirations' (Resnik and Curtis, 2011, p. 377). Further in that vein, we find examples like the Constitutional Court of South Africa, whose architecture displays the country's desire to look forward in order to escape its troubled history, and symbolically represent a break with the dark past of Apartheid by creating more democratic and pluralistic institutions that reflect the dynamism and multicultural nature of South African society today.

On the other hand, we have examples like that of the US Supreme Court building – the iconic neoclassical monument, designed by the architect to reflect the State's desire for a connection to a mythical ideal of justice embodied by the Greco-Roman temples and other famous buildings of antiquity.<sup>2</sup> We can conclude that 'court construction at the national, regional, and transnational levels is deeply self-conscious, engaged with history by seeking either to embrace and link to traditions or to create a distance from them' (Resnik and Curtis, 2011, p. 349).

I would like to elaborate on their theory and apply it to the dichotomy in the aesthetic aspects of the Canadian Supreme Court building, for the purpose of illustrating my own hypothesis. If we take the Supreme Court building as a physical object, with its clear references to the château and picturesque schools of architecture, and its use of classical building materials (e.g. marble, bronze, etc.), we can say it is decidedly more traditional than modern. It would be too facile to dismiss the work of Cormier and others as a mere example of Canadian nostalgia or a simple manifestation of nationalism. The character of the building is slightly paradoxical, reflecting the country's history, its constitutional and judicial traditions, and the intentions of the many artists and architects that created it. It presents a unified face to the visitor yet remains eclectic, both inside and out. It is imposing architecturally but visually and physically accessible. It is both a public place, where the rituals and processes of the judiciary are exposed to the general public, and a place where the secrecy and the obscurity of the legal system prevail. Accordingly, the Court and its architecture seem to reach in both directions. It attempts to engage with Canada's legal history, while, at the same time, symbolically embracing a kind of legal modernity, serving as it does as the main vehicle for moving the country's constitutional democracy forward, as the primary interpreter and defender of the Federal Constitution and its *Charter of Rights and Freedoms* (The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11).

However, the challenge of creating a Supreme Court building that reflects the legal traditions and social norms (the former are frequently in conflict with the latter), as well as the ever-evolving aspirations of a dynamic and highly diverse, democratic and pluralistic society such as Canada's, is in many respects an impossible one. It remains an open question whether the image of justice that the Court's iconography and symbolism evokes is the best representation of Canadian justice.

2 As architectural historian, Rhodri Windsor-Liscombe tells us that 'the monumental portico of the Supreme Court despite the inscription in the entablature, "equal justice under the law", recalled the slavery accepted in ancient Greece and racial segregation largely tolerated in American jurisprudence until the 1960s" (2014, p. 22).

The theoretical framework underpinning my critique will draw heavily on the conclusions of Resnick, Curtis and Mulcahy, as well as other critical, socio-legal (Sauvageau *et al.*, 2006), anthropological (Tiersma, 1999), post-colonial (Woo, 2011) and semiotic (Evans, 1999) approaches to law, and also requires a basic understanding of the history of some aspects of twentieth-century Canadian architecture, as well as a sufficient knowledge of the social, political, historical/colonial and geographical context in which the Court is situated and has evolved. This examination also includes an important element of comparative analysis between the legal architecture of the Supreme Court of Canada and the *Édifice Ernest Cormier* courthouse in Montreal.

Certain outstanding physical features and characteristics of the Court's architecture will be highlighted in order to interpret how the Court presents itself to the informed observer. This part of the analysis will be based on my own subjective experiences during frequent visits to the Court that involved photographing numerous aspects of the design and legal architecture of the Court building. These visits also loosely created the structure of the second half of the paper, in addition to supplying visual material that illustrates key aesthetic and decorative elements, by serving as the narrative of an informed observer's impressions of the Court building, as they proceed from one area to the next. The interpretation will proceed using both the reconstructed intent of the author as well as the descriptive visual, sensual and cognitive experiences that the building offers to an informed observer.

My visits also yielded another minor theme: namely a typical experience provided by a tour of the Court that, at the same time, represents a manifestation of the dichotomy between private and public spaces at the Supreme Court of Canada. This will serve as a metaphorical device illuminating the problem of what is seen at the Court and what remains largely unseen by laypersons and even many jurists in their exploration of the Supreme Court of Canada building.

This paper is divided into two major parts, each with an overarching theme and several related subthemes. The first part (the Introduction and Section II) is largely a historical, geographical and architectural description of the physical space and evolution of the Supreme Court of Canada as legal institution. The main emphasis will be on the architecture and physical environment of the current building as well as its aesthetic evolution and the artists behind it.

In Section III, I have undertaken my own analysis and applied a critical and pluralistic legal lens to the iconography, symbolism, architecture, geography and decorative elements of the Court complex. The order of the subthemes and illustrations in this section correspond with my own subjective experiences as an informed observer visiting the Court on both guided and unguided tours of the building.

Finally, the paper concludes with a critique and discussion of the potential for creating a more democratic and decolonised space at the Court through minor modifications of its physical space and legal architecture, and a more pluralistic and democratic approach to the way it represents modern Canadian justice in all of its diversity.

## **II. The evolution of the Supreme Court of Canada: from converted stable to the highest court in the land**

### **2.1 The origins of the Supreme Court of Canada**

It is appropriate to begin with a brief overview of the way in which the situation of the Canadian Supreme Court has evolved since Confederation (Canada's founding in 1867) in both a legal and, more importantly for my analysis, a physical sense.

Canada's framers did not mention the Supreme Court of Canada when they drew up the document that would eventually become the British North America Act (The Constitution Act, 1867, 30 & 31 Vict, c 3), but did mandate the creation of a 'General Court of Appeal', by act of

parliament, should that body be so inclined.<sup>3</sup> The Supreme Court of Canada would only come about later with the passing of the Supreme Court of Canada Act in 1875 (Supreme Court Act, RSC 1985, c S-26).

The Court, for much of its early history, was relatively marginalised within the legal system, as the current Chief Justice Beverly McLachlin has observed: 'For most of its first 100 years, the Supreme Court of Canada was, all things told, a modest affair' (Canada and Supreme Court, 2000, p. 5). This was, in large part, due to its status as inferior to the Judicial Committee of the Privy Council, in the legal hierarchy of the day. In effect, it was not the highest appellate court in Canada until 1949.

## 2.2 The geography of the court building

It is perhaps an indication of the vagueness of the Court's functions and the lack of any clear separation of powers doctrine between legislative and judiciary that the court did not possess its own home at the time of its inception (Figure 1).<sup>4</sup> The Court's current home was completed in 1941, but was occupied by the Wartime Commission until 1946, when the Supreme Court of Canada finally moved to its current location, to the west of the Federal parliament, overlooking the Ottawa River.

## 2.3 The court's architect and its aesthetic elements

It was during the 1930s that Ernest Cormier (Figure 2) was selected to oversee the building of the new Supreme Court. Cormier was no stranger to the challenges of undertaking monumental public projects.

The Supreme Court of Canada was not Cormier's first courthouse project. He had previously been commissioned by the provincial authorities in Quebec to design a home for the Superior Court of that province located in Montreal (Finn and Beauregard, 2005, p. 44) (Figure 3).

Designing this major public monument (along with his partners Louis-Auguste Amos and Charles J. Saxe) had a profound impact on Cormier's career and his aesthetic sensibilities. This would ultimately lead him to Ottawa and the commission for the Supreme Court of Canada. Though the two structures may not bear a striking resemblance at first glance, they do share much of Cormier's architectural vision and, more to the point, reflect his sense of law and justice, which would later be infused in the design of the Supreme Court of Canada.

In spite of his experience with monumental architecture, Cormier's slightly modernist tendencies made him, in some respects, an uneasy fit with the architectural Zeitgeist of public monuments in Ottawa during the first half of the twentieth century. The dominant aesthetic on Parliament Hill was essentially neo-gothic, and a large degree of architectural uniformity prevailed among the major government buildings of the era. As Liscombe states with respect to these buildings, they 'were required to distinguish, materially and symbolically, the Canadian nationhood in relation to British and French heritage, but in reaction to the United States system' (Liscombe, 1993, p. 27). Indeed, when he began designing the Supreme Court in 1937, Cormier was very aware of the sometimes strict requirements of his government bosses (especially Prime Minister Mackenzie King). At the same time, he endeavoured 'to combine the picturesque with a more universal modernized vocabulary' (Canada and Supreme Court, 2000, p. 201).

3 Article 101 reads: 'The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provided for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada'. Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.C.S. 1985, App. II, No.5.

4 Resnik and Curtis explain that, by contrast, 'one of the main arguments advanced in support of the 1935 United States Supreme Court building project was that a stand-alone court building would substantiate the idea of judicial independence'.



**Figure 1**

The original courtroom of the Supreme Court of Canada (photo in the public domain, via Wikimedia Commons).

The picturesque or châteaux style had risen to prominence in the late nineteenth century<sup>5</sup> and had quickly become the preferred school of public architecture in Canada. However, the style would have to be modified, to some extent, in order to suit the demands of a functional courthouse building.

#### **2.4 Sources of inspiration for the design of the court building**

As a master architect, Cormier's proposed design for the Court took into account a wide range of contemporary influences from Canada and abroad. Like most of the products of the Beaux-Arts school of art,<sup>6</sup> he sought to create buildings that drew upon classical elements for inspiration, but were also modern and avoided the use of 'literary content' (Canada and Supreme Court, 2000, p. 203). In other words, these were buildings in which the 'character and social role of the institutions housed in them illustrated through architectonic order rather than ancient or allegorical motif' (Mulcahy, 2011, p. 203). This, as we shall see, is not entirely reflected in the Supreme Court's aesthetic today, which includes a number of classical symbols of justice, though some of the most important of these (Walter Seymour Allward's statue of *Iustitia*, for example) were not conceived by Cormier himself.

5 'At the time of the centenary of Confederation in 1967, and the intensified search for a specific Canadian identity, the *Château* (emphasis added) style became interpreted as architectural symbol of the alliance between the "two founding peoples", the British and the French Settlers, since it combined Scottish, Baronial, and French *Châteaux* motifs', Rhodri Windsor-Liscombe, 1993, p. 127.

6 This school of architecture essentially held to two central tenets, perfectly embodied in the oeuvre of Ernest Cormier: (1) architecture is the most important of the fine arts; (2) the architect as an artist must master every area of the art form. See Vanlaethem (2005, p. 17).



**Figure 2**

Ernest Cormier, architect of the Supreme Court building (photo in the public domain, via Wikimedia Commons).

Perhaps most crucially, Cormier had to contend with the often fickle tastes of senior public servants as well as the prime minister himself, who had insisted on personally overseeing the building of the new courthouse. King's critique of the proposed building, as recorded in his personal diary, reflected his rather old-fashioned notions of architecture. For instance, he felt the Court was 'too modern and of Muscovite inspiration, comparing it to a factory' (Canada and Supreme Court, 2000, pp. 203–204). Therefore, in order to please the king, Cormier added a few traditional elements, such as a massive copper roof.<sup>7</sup>

For the façade, Cormier attempted to fuse a number of different but complementary styles of architecture (picturesque, classical, Art Deco, Beaux-Arts, Château) by including a number of decorative elements representing diverse aesthetic influences. For the front of the building, Cormier drew his inspiration from the classical designs of famous French Châteaux which, like the Supreme Court, typically have corner pavilions framing a '*corps de logis*' with a hipped roof (Canada and Supreme Court, 2000, p. 205). The distinctive Art Deco torches or candelabras inspired by neoclassical designs were also Cormier's idea (though he borrowed the design from French Art Deco artist Edgar Brandt; Vanlaethem, 2005, p. 26). Although the Beaux-Arts method did allow some variety in terms of decorations, the fundamental elements of the structure and

7 Liscombe explains that these were essentially a superfluous architectural features and a concession to the dominant aesthetic of the parliamentary precinct. 'The Château-Baronial style roofline explains the instructions to Montreal architect, Ernest Cormier, that he cap the two side pavilions of the Supreme Court in Ottawa . . . with steeply pitched copper roofs not necessitated by the internal plan' (1993, p. 140).



**Figure 3**

Édifice Ernest Cormier in Montreal-Home of the Quebec Court of Appeal (photo by Marc Dufour, in the public domain, via Wikimedia Commons, <<http://creativecommons.org/licenses/by-sa/3.0/>>).



**Figure 4**

The Supreme Court of Canada today, as seen from the South lawn (photo by Taxiarchos228, in the public domain, via Wikimedia Commons, <<http://www.gnu.org/copyleft/fdl.html>> or CC-BY-SA-3.0, <<http://creativecommons.org/licenses/by-sa/3.0/>>).

design had to be organised according to strict principles of logic and with the overall effect of the building in mind (Canada and Supreme Court, 2000, p. 205).

'For the highest court in a democracy, the architect had to convey an impression of unquestionable authority, through the use of vast proportions and a severe décor, and transparency of action, symbolized by natural light' (Canada and Supreme Court, 2000, p. 205). The Supreme Court building has at its heart the main courtroom, with all the other institutions located in relation to it. At the front, the main entrance is flanked by the courtrooms and adjunct office of the former Exchequer Court, located in the building's corner pavilions (Figure 4). The back of the building is organised around the two courtyards. At the centre is the main courtroom, connected to the judge's chambers. This is also where one finds the sumptuous judges' conference room, where deliberations between justices take place behind closed doors. On the second floor, directly above the central court, the library and the judges' lounge and dining room are located. One of the bedrock principles of the *Beaux-Arts* school was that the building's design should be so accessible that a visitor should not need to ask for directions (Canada and Supreme Court, 2000, p. 206).

Cormier was involved in planning every detail of his projects. He imagined each aspect of the building down to its smallest components, including the décor, as well as much of the furniture.

Architectural historians are generally in agreement that the artist's work is an architectural tour de force with its skilful and dramatic marriage of form, function and grandeur. Are Isabelle Gournay and France Vanlaethem correct when they state 'It would be difficult to imagine a more eloquent three dimensional representation of the role the Supreme Court has assumed in the life of the nation' (Canada and Supreme Court, 2000, p. 207)? This question, at the crux of my analysis, will be explored in the next part of this paper.

### III. Legal iconography and symbolism at the Supreme Court of Canada

#### 3.1 *Iustitia* and *Veritas* as judicial metaphors

Some of what is on display in the Court's surroundings consists of standard symbols of nationalism found at most courthouses in Canada and need not be mentioned here. Yet some of what is on display outside the Court does merit a more detailed discussion, and further exemplifies my hypothesis regarding the challenges of incarnating legal pluralism and Canadian diversity in the Court's physical environment. Among the most important of these are the statues of *Iustitia* (Justice) (Figure 5) and *Veritas* (Truth) (Figure 6) that stand vigil in front on the main entrance. These two striking examples of classical judicial metaphor were sculpted by Canadian Sculpture Walter Seymour Allward (Boyanoski, 2008).

The bronze sculptures were originally designed to be part of a monument to Edward the VII that never materialised, due to the outbreak of the Great War (Boyanoski, 2008). Moreover, the statues were lost for 50 years for reasons that are still unknown, and were only rediscovered in their crates buried under the parking lot and installed at their current location outside the Court in 1970.<sup>8</sup> To some extent, this obscure episode illustrates the haphazard nature of the objects decorating the Court and its surroundings. Some of these, like the statues, were designed before the building was erected, while others were put in place long afterwards.

The use of the allegorical symbols of Truth and Justice to beautify courts is, of course, not unique to the Supreme Court of Canada building (Curtis and Resnik, 1987). Yet, Cormier wanted the architecture of the Court to exude a modernist and relatively austere style without any judicial clichés (Vanlaethem, 2005, p. 253) or allegorical motifs (Canada and Supreme Court, 2000, p. 205).

8 St Pierre (2012).





**Figure 5**

*Iustitia* Lady Justice statue by Walter Allward (photo by the author).

Cormier's specific thoughts about the addition of the two statues are not known but, based on the rest of the Court's aesthetic, and his notorious need to be involved in every area of designing the building, we might assume that he would at best feel ambivalent about them. At worst, I suspect he might have rejected them altogether for cluttering the elegance of the Court's façade and being rather too traditional as imagery.

Somewhat ironically, the statues have become symbols of the Court and an integral part of its legal iconography. Consider the example of *Veritas*, a Roman goddess. She is typically depicted as a young virgin dressed in white robes (Mercatante, 1988, p. 643). In Allward's image of the figure, she is seen clutching a large book with the Latin word *Veritas* inscribed on it, which might be construed as representing the written laws of Canada, though, given the original context Allward had in mind, we cannot assume as much.<sup>9</sup>

In any case, *Veritas* provides a dramatic contrast with her darker, more menacing-looking sister *Iustitia*, who is standing nearby. She looks slightly upwards with her fingers pointing to the book that appears to be weighing her down. Part of her hair is showing, as well as her neck, upper chest, part of her right foot and toes. Allward has given her a plaintive look as though she is burdened by the grief that she bears for the death of King Edward VII, or perhaps of administering justice. Possibly Allward intended for the two to be juxtaposed to represent the duality of justice;

<sup>9</sup> According to an Ottawa Citizen report, the sculptor Allward expressed the following wish about the statues: '... through truth and justice war might cease, and peace might descend upon the Earth'. Upton (1988).



**Figure 6**

*Veritas* statue by Walter Allward (photo by the author).

at once enlightened, humane and impartial in its pursuit of the facts (*Veritas*), while at the same time a harsh defender of the social order always ready to punish those who break the law (*Iustitia*).

The Roman goddess *Iustitia* (or 'Lady Justice') is a common feature of courtrooms throughout the world. As a symbol of justice, she is unmistakable, generally depicted as carrying scales, sometimes blindfolded (though this element is rare), and holding a sword (Resnik and Curtis, 2011, p. 64). The traditional features typically represented by *Iustitia* each has particular allegorical meaning. For instance, her scales of justice, usually carried in her right hand, are meant to convey that the evidence of both sides in a case will be weighed impartially by the court. Her sword, generally seen in her left hand, represents a kind of quasi-metaphorical manifestation of the power of the court to punish transgressors of the law. Finally, the blindfold has been interpreted and reinterpreted differently throughout history. In its latest conception, the symbol is generally thought to represent the judicial values of independence and accountability (Resnik and Curtis, 2011, p. 95). Hence, like the literal blindfolded figure, the judiciary must also be blind (metaphorically) in striving to be fair, impartial and without bias towards a particular gender, race, religion or creed.

Though this is the conventional interpretation of the symbol today, such notions of judicial egalitarianism were not commonplace when the statues were designed in the early twentieth century. There are numerous examples of Supreme Court rulings, especially from the pre-Charter era, of the discrimination and prejudices of the court, resulting in tainted decisions that went against what would today be regarded as fundamental rights.<sup>10</sup>

<sup>10</sup> See e.g. the 'Persons Case' where the Court ruled that women were not eligible to sit in the Canadian Senate. *Henrietta Muir Edwards and Others v. The Attorney General of Canada* [1929] UKPC 86, [1930] A.C. 124 (18 October 1929) P.C. (on appeal from Canada).

Moreover, many of the features commonly seen in representations of *Iustitia* are not part of Allward's statue. This may be because she was intended for an altogether different purpose, or because his design was meant to reject the traditional symbolism of the goddess in favour of a more modern and natural-looking figure. Whatever the explanation, she has a decidedly more mysterious air about her in this depiction than she generally does elsewhere. She is cloaked by a large hood and a flowing robe hiding all but her severe facial expression and her left hand. Her arms rest upon the handle of her sword, largely concealed from the observer.

In their thorough examination of the representations of 'Lady Justice' in courthouses around the world, Resnik and Curtis suggest that the popularity of *Iustitia* is due to the fact that 'we know the image of Justice, because it has been deployed, politically, by governments seeking to link their rules and judgements to her legitimacy' (Resnik and Curtis, 2007, p. 145). According to their analysis, the visual elements that representations of Justice typically depict can be seen as 'invoking positive utilitarian aspects of what justice entails: scales to dispense justice evenly; the sword to mark the power of the court to enforce the verdicts rendered, and, sometimes, a blindfold, suggesting judgement uncorrupted'.<sup>11</sup>

### 3.2 The candelabras and quasi-religious symbolism

As we have seen, Cormier was involved in conceiving the overall design of the building and also in many of the significant details that decorate both the exterior and the interior of the building. One such detail is the remarkable neoclassical candelabras that stand near the bronze doors at the main entrance to the Court (Figure 7). Although they may be somewhat austere, thus consistent with Cormier's desire to keep the aesthetic of the court thoroughly modernist in its design, there is an unmistakably religious connotation to them. Visual metaphors for fire (e.g. torches, flames and candelabras, etc.) have been viewed universally for millennia as symbols of knowledge. This is especially true of Judeo-Christian and Islamic symbolism. Light and fire are a common metaphor for the 'Holy Spirit' or God in Judaism,<sup>12</sup> as well as sometimes representing the divine wrath who punishes using flames. This can be likened to the way in which courts are often associated with the notion of punishment of those who violate the law.

Torches and fire have traditionally also been associated with temples where public religious ceremonies are held. When Cormier designed his first courthouse in Montreal, his aspiration was to create what has been described by some as a civic temple. '*Ernest Cormier désirait ériger un monument voire un temple civique qui serait à la hauteur de sa destinée*' (Vanlaethem, 2005). In the process of creating his quasi-temple of justice, the architect was very mindful of the need to provide an environment that would not only be functional as a setting for legal proceedings, but also serve as a public space for ceremonial purposes and even communal mourning.<sup>13</sup> '*...des espaces qui répondent non-seulement aux exigences fonctionnelles de l'appareil judiciaire, mais encore, dans les parties publiques, aux nécessités du ceremonial*' (Vanlaethem, 2005, p. 23). Some journalists have remarked on the strangely religious atmosphere that prevails at the Court. 'Reporting from the Supreme Court is more like covering a religious institution than covering a political body ... Judges remain for the most part hidden from view and the inner workings and politics of the Court are seldom reported' (Sauvageau *et al.*, 2006, p. 197).

11 See *Representing Justice* for a detailed analysis of the link between the concept of the 'Veil of Ignorance' and blindfolded representations of Lady Justice (Resnik and Curtis, 2011, p. 160).

12 J. Joseph, *HOLY SPIRIT*. Available at: The Jewish Encyclopedia.com, <http://www.jewishencyclopedia.com/articles/7833-holy-spirit> (accessed 27 March 2017).

13 Indeed, the *Édifice Ernest Cormier* has been used for a number of high-profile non-judicial public ceremonies over the years, including the funerals of major political figures (Vanlaethem, 2005, p. 23).



**Figure 7**  
Candelabra by Ernest Cormier (photo by the author).



**Figure 8**  
Bronze doors designed by Ernest Cormier and Henri Hébert (photo by the author).

### 3.3 The bronze doors and judicial mysticism

For the exterior, Cormier envisaged a limited number of decorative elements, each symbolising a different architectural influence on the Court (Canada and Supreme Court, 2000, p. 204). Of these objects, perhaps the most agreeable to him, given that they were already collaborators, would have been working with Montreal sculptor Henri Hébert (Champagne, 2008), on the making of the bronze doors that provide the main entrance to the Great Hall, at the front of the Supreme Court building (Figure 8).

The doors are made of solid bronze and are inspired by the Italian Renaissance style. Each panel represents a different scene from the history Western and British common-law traditions. They include the following scenes: Twelve Tables of Roman Law, the Statute of Westminster, Confederation, Magna Carta, The Bill of Rights and Institutes of the Lawes of England (Canada and Supreme Court, 2000, p. 205). These are clearly intended to evoke in visitors a sense of the importance and antiquity of the law as an institution and its development in specifically Roman (representing the civil law tradition) and British (representing the common-law tradition) legal history. By implicitly identifying itself with these historical institutions, the Court is tacitly linked with two key aspects of Canadian law: the bi-judicial legal sources of Canada's legal system and the historical foundations of Canadian legal culture in Western or European civilisation. In doing so, the Court is associated in a metaphorical sense, to the perceived historical legitimacy of both, but also their problematic colonial legacy. After all, these images of justice are not consistent with modern notions of legal pluralism in Canada.

Furthermore, each of the six scenes is related to a different legal virtue: learning (Institutes), probity (Bill of Rights), wisdom (Twelve Tables), courage (Confederation), civism (Magna Carta) and loyalty (Act of Westminster). Indeed, as others have noted in their analysis of allegorical imagery traditionally used in courthouses, this may have other intangible benefits. 'Ruling powers ... built these structures to link themselves to history and religion so as to convey the legitimacy (rather than to render opaque and obscure) the violence of the law' (Resnik and Curtis, 2011, p. 61).

However, no descriptions of the images depicted on the two doors are displayed, nor are they found in any of the Court's literature online or elsewhere, so it is left to the observer to decipher the meaning of them. This may be an unconscious or conscious attempt at reinforcing the mystique of the legal system through architecture. If we consider that, traditionally, law was seen as the domain of jurists for whom these legal icons would have been familiar and that, conversely, they would be virtually indecipherable to a layperson, perhaps the designers of the doors were, in some small way, perpetuating the elitism of the law as an institution. In my view, by omitting any explicit references to the historical documents portrayed, the doors subtly convey the message to the uninformed observer that they are entering an obscure world of symbols, jargon and legal traditions that they know nothing about.<sup>14</sup>

### 3.4 The Grand Hall and invented traditions

In order to enter the Court today, it is first necessary to pass through metal detectors, as you do at virtually any modern courthouse in Canada. Nevertheless, it does make you wonder whether the new security measures introduced in recent years would be approved by Cormier. As Mulcahy remarked about older courthouses, 'many existing buildings were not designed with such intrusive security measures in mind with the result that the beauty of a public atrium can be upset by the noise and physical presence of security measures' (Mulcahy, 2011, p. 156). There

<sup>14</sup> The *Édifice Ernest Cormier* also has very imposing bronze doors at its main entrance, although, in that instance, the scenes depicted are quite different in that they are abstract judicial virtues as opposed to historical references. Jurist Raul P. Barbe tells us that the six allegories found on the doors of the Cormier building are the following '*La Vérité, la Justice, le Jugement, Le Code criminel, le Pardon et le Châtiment*' (Barbe, 2013, p. 236).

appears to be no attempt made by the security of the Court to integrate or make more discreet these measures. It also diminishes the public accessibility that was a fundamental part of the original concept for the building, put forward by the architect Cormier.<sup>15</sup>

Once we actually step inside the Grand Hall, the observer cannot help being struck by the Court's large pseudo-classical-looking logo (also designed by Cormier), placed, as it is, at the centre of the Great Hall, and consisting of a Roman or neoclassical-type mosaic of differently coloured tiles, primarily gold and emerald green, in the shape of an intertwined and highly stylised capital letters S and C (Figure 9).

The somewhat abstracted, in this example, laurels that encircle the letters have traditionally represented peace, and are quite typical of judicial symbolism associated with courts at both the international and domestic levels (Resnik and Curtis, 2011, p. 284). This aesthetic continues when our eyes reach the massive vaulted ceilings. Neoclassical elements such as these serve to emphasise the Court's appreciation for the foundations of Western legal systems. The use of neoclassical elements are common in Canadian courthouses, and serve as a subtle reminder to the visitor that they ought to demonstrate proper reverence for the institutional history of the Court. Hence, the Court has, through 'the appropriation of classical iconographical tradition and aesthetic . . . asserted superior status, authority, and regime' (Liscombe, 2014, p. 21).

They are also examples of what historians sometimes refer to as invented traditions.<sup>16</sup> Take for instance, Resnik and Curtis's description of the neoclassical design of the US Supreme Court building, finished roughly a decade before its Canadian counterpart, in 1935. 'The Court's architecture and imagery indeed looked back, to enlist the authority of lawmakers long gone through reliance on what historians term "invented traditions". That is, new practices dressed up to seem longstanding' (Resnik and Curtis, 2013, p. 231). Hence the logo lends the building, and by extension the Court itself, historical legitimacy in the eyes of the observer that it might not otherwise benefit from were it to use more contemporary symbols of justice.

Natural light plays an essential part in illuminating the décor of the Grand Hall and functions as a vaguely clichéd judicial metaphor as well. The seven tall windows and four bronze skylights, which provide ample daylight for the Hall, were the architect's idea (Figure 10).<sup>17</sup> The concept of light as a symbol of judicial transparency can be found in numerous other courthouses all over the world and is the subject of some analysis in both Resnik and Mulcahy's research on courthouses in England. In the former's study of the Australian Commonwealth Law Courts in Melbourne, it is said that 'as in many jurisdictions, light was to "play a central conceptual role" to reveal both architecture and accessibility of justice' (Resnik and Curtis, 2011, p. 218).

However, such design elements should not be dismissed as frivolity, as they may, in fact, have some positive effects on judicial results. For example, Mulcahy cites a 2009 architectural study (Hockings, 2009, p. 67), which appeared in an Australian journal, that suggests that judicial environments impact the outcomes of the proceedings that take place within them, in critical ways. 'Research and judicial opinion suggests that courtrooms with an external aspect and natural

15 For an interesting read on the harmful effects of security on the image and aesthetic of the US Supreme Court, read Justice Breyer's (2010) lament in a memo posted on the SCOTUS blog. Available at: <[http://www.scotusblog.com/wp-content/uploads/2010/05/Justice\\_Breyer\\_Statement-1.pdf](http://www.scotusblog.com/wp-content/uploads/2010/05/Justice_Breyer_Statement-1.pdf)> (accessed 27 March 2017).

16 See Hobsbawm and Ranger's definition: 'invented tradition is taken to mean a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature which seek to inculcate certain values and norms of behavior by repetition, which also implies continuity with the past' (1983, p. 1).

17 The strong resemblance between the Grand Hall or *salle des pas perdus* and the lobby of the *Édifice Cormier* in Montreal is not coincidental. Archival materials kept by the Canadian Centre for Architecture prove that the former was inspired by the latter. Moreover, Vanlaethem explains that in the latter building light is also used as a metaphor for judicial transparency '*L'éclairage naturel abondant contribue à l'agrément des parties ouvertes au public*' (Vanlaethem, 2005, pp. 18, 20).



**Figure 9**

Logo of the Supreme Court of Canada by Ernest Cormier (photo by the author).



**Figure 10**

The Grand Hall and main entrance (photo by the author).

light help to deliver much better trial outcomes in which participants are more relaxed and better able to concentrate for longer period of time' (Mulcahy, 2011, p. 155).

By any objective standard, the Grand Hall is impressive, not just by virtue of its enormous size (measuring thirty-two by seventeen metres, and twelve metres in height), but also by the lavish

materials chosen by Cormier to be part of its construction. These include marble, bronze and plaster of the highest quality. For instance, the walls are made of *rubané* marble, as are the moulded architraves (another element of classical design) that decorate the entrances to each of the three courtrooms. Why make such a lavish display of expensive materials? Cormier's design is not simply meant to convey the authority and power of the Canadian judiciary (Vanlaethem, 2005, p. 71); it is also meant to demonstrate its tremendous resources. Indeed, these materials were obtained from foreign sources, at great cost, somewhat undermining the 'Canadianness' (for lack of a better word) of the whole building, while, at the same time, further highlighting the growing wealth of the federal government of that era.

Judicial hierarchy is inherent in the design and materials chosen by the architect. The Hall is arguably excessively luxurious, but the offices of court administrators and other facilities (e.g. the main library), by comparison, are rather humble-looking, aesthetically speaking.<sup>18</sup> This is particularly true of the media room used by the members of the press who frequent the Court on occasions when a major decision is being handed down (Sauvageau *et al.*, 2006, p. 29). At the same time, the existence of a press room points to a privileged relationship between the news media and the Court.<sup>19</sup>

### 3.5 Symbols of constitutional monarchy and colonialism

A recurring motif that can be found in several different locations, including the Judge's Conference Room and the Judge's Reading Room, but is most prominently displayed in the Grand Hall, are the Canadian coats of arms of all ten provinces and three territories found on the walls. On the most basic level, these symbolise the fact that the Court has jurisdiction to hear cases originating anywhere in the country (in contrast with, for example, the US Supreme Court, which deals only with federal laws). Some of the arms bear the Latin motto of that province inscribed beneath them. The use of Latin is a common feature in Western legal venues, even in more modern facilities, and the Supreme Court is no exception. It reflects a legal tradition that has its roots in ancient Rome, and continued to be the official language of the law throughout Western Europe for centuries afterward (Resnik and Curtis, 2011, p. 286).

That this tradition was reproduced by White European settlers in North America is hardly surprising to any student of history, even though its quotidian use in the legal terminology of the Canadian judiciary, and other common-law jurisdictions, is in decline and has been since at least the eighteenth century.<sup>20</sup> Again, we see a link with the ancient history of European legal cultures. The use of Latin legal credos can be found in both courthouses designed by Cormier and, thus, must be considered one of the key elements of his conception of Canadian law.<sup>21</sup>

The colonial/settler origins of Canadian legal institutions remain a major feature of the Court's design, and it becomes patently clear to the observer upon entrance to the Hall that the institution of the British monarchy remains Canada's legal foundation and the source from which

18 Vanlaethem describes the same hierarchy of materials and décor being applied to the design of the *Édifice Ernest Cormier* 'Des salles les plus publiques au pièces réservées à l'administration, des espaces les plus solennels à ceux dont la fonction est purement utilitaire, les matériaux et les finitions se simplifient' (Vanlaethem, 2005, p. 23).

19 As some scholars have stated, with respect to the significance of the US Supreme Court's decision to create a designated space for the press in the 1930s, 'the courthouse also anticipated the central role that media would come to play in framing information about courts—and invited the press in' (Resnik and Curtis, 2011, p. 232).

20 For a detailed study of this aspect of legal anthropology, see Tiersma, In particular, Chapter Three, dealing with the resurgence in the use of English in British common law (Tiersma, 1999, p. 35).

21 The *Édifice Ernest Cormier* bears the following Latin inscription over its entrance: 'FRUSTRA LEGIS AUXILIUM QUAERIT QUI IN LEGEM COMMITTIT' ('Celui qui viole la loi recherche en vain son secours') (Barbe, 2013, p. 236). In compliance with the Constitution and Federal law ('Official Languages Act', RSC 1985, c 31, 4th Supp), all of the Court's media must be bilingual.





**Figure 11**

Royal coat of arms of Canada, as seen above the entrance to the Supreme Court (photo by the author).

the legal system derives much of its perceived legitimacy. Emblems of monarchy can be found throughout the building, perhaps none more visible than the two commemorative plaques, which describe (in both French and English, official languages of the Court) how the cornerstone of the building was unveiled by Queen Elizabeth and King George VI, in 1939, at the inauguration of the Court.

The other highly conspicuous one is the Canadian coat of arms above the entrance to the Supreme Courtroom (Figure 11), depicting, as it does, the national symbols of England, Ireland, France and Scotland. Most importantly, from a constitutional standpoint, the coat of arms has the symbol of the Canadian Crown above it, which indicates, both metaphorically and legally, Canada's status as a constitutional monarchy.

On a superficial level, these overt symbols of constitutional monarchy, the basis of Canadian law, found in federal and provincial courthouses throughout Canada, merely emphasise a basic legal fact of Canadian constitutionalism: the Crown is equated with legal sovereignty.

It can, however, be reinterpreted today as having a deeper symbolism. In her study of British courts, Mulcahy offers evidence that the use of the royal coat of arms in courtroom settings dates to at least the seventeenth century in that country (Mulcahy, 2011, p. 41) and that, furthermore, the arms as manifestation of the power of the justice system continues to be so deeply ingrained in the judicial process that special efforts have been made to include them, even in atypical circumstances, such as the delivery of evidence or testimony via video technology, to court officials.<sup>22</sup> Canadian federal courts, as well as provincial and territorial courts, continue to use royalist iconography and symbolism, for much the same reasons as their counterparts in Britain: to visually identify themselves with the power and legitimacy of the Crown and its legal legacy in Canada.

However, these symbols may also evoke cultural and colonial oppression by the British/Canadian Crown, especially for Canada's indigenous peoples. Therefore, as Mulcahy would say, the

<sup>22</sup> 'When it is necessary to remove the judge from the courtroom to a video suite order to hear live-link evidence arrangements are expected to be made, if practicable, for the royal coat of arms to be placed above the judges seat' (Mulcahy, 2011, p. 170).

'architectural language'<sup>23</sup> of these objects depicts an inherently colonial conception of Canadian law, at odds, though this may be, with modern notions of citizenship, legal pluralism and democracy in Canada.<sup>24</sup>

In his study on the history and architecture of courthouse design found in British Columbia, Liscombe describes the choice of classical architecture and legal iconography as being linked to the 'Chimera'<sup>25</sup> of British colonial authority as it manifested itself in Canadian courthouse designs. By the same token, this historical divergence between ethics (i.e. social functions) and architectural aesthetics can be found both in representations of justice in the physical space and the institutional history of the Supreme Court of Canada:

'The grand allusion in the classical articulation of the courthouse furthermore embodied the attitudes and actions of the dominant settler society that outlawed the Potlatch ceremonies in 1918, denied citizenship (federally) to Aboriginal Canadians until 1961, and undermined their claims to title (and a legitimate history) until well after the British Columbia Supreme Court decision in the *Delgamuukw* case in 1997 (author's note: *Delgamuukw* was subsequently affirmed by the Supreme Court of Canada):' (Liscombe, 2014, p. 28)

### 3.6 Representing justice in the courtroom interiors

Moving on to the Supreme Court's interior, we find the heart of the complex situated on the second floor, elevated above the two federal courts, reflecting its supremacy in the judicial pyramid. The building 'is organized around the main courtroom at its centre, with the other elements revolving around it according to a hierarchy that reflects their more or less public nature' (Canada and Supreme Court, 2000, p. 205). After we have climbed the stairway that takes us to the entrance of the courtroom, we enter, after passing through yet another metal detector, the large room through its heavy mahogany doors. Once inside, we are greeted by the sight of the Supreme Court of Canada's interior (Figure 12).

The first thing that catches the eye are the nine perfectly symmetrical chairs with high burgundy-coloured backs (some observers have likened them to thrones) (Sauvageau *et al.*, 2006, p. 19). This is, of course, where the eight sitting 'puisne' (Latin for cadet) Supreme Court Justices sit, along with the Chief sitting first and in the middle, though her chair and place are not remarkable and have no distinguishing features from the others. Perhaps this is to emphasise the egalitarian nature of the

23 In the context of the Supreme Court of the US building, Mulcahy points out that 'clearly the architectural language represented vastly different concepts of civility and community; the harmonious formal aesthetic masking a harsh regime for the alienated aboriginals and imported Afro-Americans whose absence or presence assured settler economic and social advantage' (Mulcahy, 2011, p. 9).

24 See e.g. the *McAteer* case in which the plaintiffs argued unsuccessfully that the oath of allegiance to the monarchy in the Canadian citizenship ceremony violated their freedom of speech and equality rights under the Charter. Superior Court Judge Morgan, however, found that 'Whatever problems the Applicants think are associated with the monarchy, it is not irrational for Parliament to have selected a figure that has been throughout the country's history, and continues to be until the present day, a fixture of its constitutional structure' (*McAteer et al. v. Attorney General of Canada*, 2013, para. 46 [Indexed as: *McAteer v. Canada (Attorney General)*], 117 O.R. (3d) 353 [WWW Document], Quicklaw. Available at: URL <https://advance.lexis.com/document/?pdmfid=1505209&crld=8c38b17d-5c5e-468b-a506-5a8606f21c1a&pddocfullpath=%2Fshared%2Fdocument%2Fcases-ca%2Furn%3AcontentItem%3A5F81-VJY1-F016-S27W-00000-00&pddocid=urn%3AcontentItem%3A5F81-VJY1-F016-S27W-00000-00&pdcontentcomponentid=280675&pdshrepid=urn%3AcontentItem%3A5FDR-R4S1-JPP5-2194-00000-00&pdteaserkey=sro&comp=189k&earg=sro&prid=533b428f-6561-4ad6-9eec-6023b18a0bbe> (accessed 4 March 2017)).

25 Liscombe describes the concept of the chimera thus: '... it specifies the sense of dichotomy between the architectural aesthetic and the social functions of the buildings serving, or associated with the cultural cum-political agenda' (Liscombe, 2014, p. 22).



**Figure 12**

The main courtroom (photo by the author).

nine judges, who occupy, metaphorically, the same ‘bench’ and thus enjoy the same constitutional status. But even this deceptive seating arrangement is subject to the rules of hierarchy. For example, the Chief Justice or the most senior judge sits in the middle and then the others alternate according to their seniority. The second in seniority will sit to the right of the most senior justices (or the Chief Justice), the third justice will sit to the left of the most senior justice, the fourth most senior justice sits to the right of the second most senior and so forth.

There is a substantial row of powerful lights at the front of the room, designed to ensure that the justices are well lit for the cameras. There are also two Art-Deco-type wall lamps that vaguely resemble torches, in keeping with the metaphor of the justices being keepers of the ‘sacred fire’ (Lamer *et al.*, 2009). In front of them, on the right, is the desk reserved for the respondents to the case, on the left, the applicants or appellants. The six tables behind them (three on either side) are meant for the interveners to the case.<sup>26</sup> To either side, against the walls, are two long desks with chairs all along them. Typically, to the right is where the clerks working under the judges would sit during proceedings, whereas to the left of them is where you find journalists. Finally, at the very back, three rows of church-like pews are where the general public, or media, would be allowed to sit, depending on the nature of the case (e.g. certain cases of a particularly sensitive nature may be subject to a sealing order or publication ban – *Named Person v. Vancouver Sun*, 2007, S.C.J. No. 43 [WWW Document] Quicklaw. Available at: URL <https://advance.lexis.com/search/?pdmfid=1505209&crd=87bfa8af-65fb-4d7f-91ba-49fb5353346d&pdsearchterms=named+person+v.+vancouver+sun%2C+%5B2007%5D+s.c.j.+no.+43&pdstartin=hlct%3A1%3A1&pdtypeofsearch=>

<sup>26</sup> ‘The Court grants rather liberally permission to intervene to other parties who have an interest in the issue being debated. The advent of polycentric cases where rights and interests of multiple groups and individuals are at play has increased such opportunities’ (Cyr and Popescu, 2014, p. 11).

[searchboxclick&pdsearchtype=SearchBox&pdqdtype=and&pdpsf=%3A%3A&recomp=942g9kk&rearg=pdpsf&prid=8c40c848-ob9f-43f5-9d73-516546cad09e](#) (accessed 4 March 2017)).

Public access, whether directly or indirectly, to the court is a fundamental value of Canadian justice and is enshrined in the Constitution (sections 7(d) and 2(b) of the Charter of Rights and Freedoms).<sup>27</sup>

A more profound look at the evolution of common-law jurisprudence in this regard reveals that eighteenth-century thinker Jeremy Bentham was among the first jurists to promote the concept of ‘publicity’ and the beneficial influence that public access might have to the outcomes of trials. Bentham’s analysis was not confined to the abstract; he publicly advocated for designing courtrooms that were more accessible to lay people, in his own lifetime, so that they might put judges and lawyers under greater public scrutiny.<sup>28</sup>

However, despite this legal obligation to promote public access and, by extension, democracy (and in contrast with the US judicial system) as a general rule of Canadian law, lower courts have not permitted the use of media cameras inside courtrooms for the purposes of live broadcasting or reporting of trials to the general public where witnesses are involved – a topic that remains the subject of much debate among Canadian jurists.<sup>29</sup> The Supreme Court, however, is the exception to this rule, and is itself equipped with broadcasting technology and records all of its proceedings (Sauvageau *et al.*, 2006, p. 13). Indeed, through a glass window at the back of the courtroom, we see the studio used to produce the Court’s broadcasts.

The Court first allowed the televising of its hearing in 1981 with the *Patriation Reference* case<sup>30</sup> and has subsequently televised the majority of its proceedings. Many cases are broadcast live on cable television (the Canadian Public Affairs Channel or CPAC) or after a certain period of time has elapsed, depending on the nature of the dispute and the risks of publicity to the parties involved. However, through the Court’s own website, almost any case can be followed via webcast as well as on TV.<sup>31</sup> Furthermore, four widescreen televisions can be seen on either wall between the windows. These are closed-circuit and are there to show the audience of the court what is being recorded by the Court’s cameras.

The standard tour of the Court does not access the Chief Justice’s office, the Conference Room or the Reading Room, to name just a few of the areas not normally seen by the general public. It is difficult for me to scrutinise these based on pictures of these rooms alone, so I will not attempt to discuss areas that are restricted and were off limits to me. However, since this is a study in the public face of the Court, it is not essential that I view every nook and cranny of the building in order to form my own critique of it.

More importantly, there is an interesting paradox that is raised by this situation: the court is both a public forum and a place where secrecy is the norm. Judges may deliver their opinion in front of

27 Under sections 7(d) and 2(b) of Charter of Human Rights and Freedoms, R.S.Q. c.C-12, section 7(d).

28 ‘Through such openness, the public could maximize self-interest and thwart the “sinister interest” of the political and legal establishments that collaborated to advance their own concerns rather than “the community in general” (Resnik and Curtis, 2011, p. 295).

29 Even the current Chief Justice has weighed in on the matter. Beverly McLachlin stated that ‘From our perspective, which is quite different from that of a trial court, I believe that the broadcasting of our hearings has contributed to public confidence in the Supreme Court of Canada’ (speech delivered to Carleton University, 31 January 2012). Available at: <<http://www.scc-csc.ca/court-court/judges-juges/spe-dis/bm-2012-01-31-eng.aspx>> (accessed 4 March 2017).

30 See *Objection by Quebec to a Resolution to Amend the Constitution*, [1982] SCR 793, Online: CanLII. Available at: <<http://www.canlii.org/en/ca/scc/doc/1982/1982canlii219/1982canlii219.html?searchUrlHash=AAAAAQAUcGFocmlhdGlvbiByZWZlcmVuY2UAAAAAAQ>> (accessed 27 March 2017).

31 According to Sauvageau *et al.*, ‘In 1997, after much internal debate and several test runs, the court allowed gavel-to-gavel coverage of its hearings to be broadcast on CPAC, the public affairs cable channel’ (2006, p. 200).

public audiences, but they write and discuss them in private offices that remain unseen by the general public. Hence, only a small but significant part of a judge's work is visible to the public and media. Arguments and exchanges between parties, council and the bench take place largely in the public eye. But the deliberations and exchanges among justices take place *in camera*. Indeed, the architectural space of the courtroom lends itself to this divide between private and public spaces. Consider, for example, that the justices in the main courtroom enter and leave through a separate passageway that keeps them apart from members of the public, council and parties to the Court's hearings (a common feature of courtrooms all over the world). Some observers of the relationship between the public and the Court have commented on the dichotomy between the public hearings of the Court and its private activities:

'Oral arguments and questions are televised live on CPAC, after they have been made judges retire to a conference room, that is in effect an intimate but ornate library. Their deliberations are private, and their decisions will remain private until they are handed down.' (Sauvageau *et al.*, 2006, p. 20)

#### IV. Conclusions

Like many constitutional courts all over the world (though perhaps not as self-consciously as some), the Supreme Court building has been viewed as an attempt to capture the essence of Canadian legal culture. What does the design of the Supreme Court of Canada tell us about ourselves as Canadians, and the way in which we interact with our judiciary? Finally, what does the imagery of Canadian justice, as reflected in the legal iconography and symbolism in the Court's architecture, project to the world?

One thing is certain: the Court building occupies a very central place in the imaginary of Canadians with respect to their judiciary. This is due, at least in part, to its ubiquity in the media. In their book, Resnik and Curtis talk about how the image of the constitutional courthouse has become a convenient backdrop used extensively by media for the purposes of conveying legal stories to their audiences – '... it provides a backdrop for news reports either about petitioners filing against the government or about the many complaints leveled against the court's decisions' (Resnik and Curtis, 2011, p. 215). This is equally true of Canada's Supreme Court building, whose image appears countless times in newspapers, television and online in any number of places owing to an intense focus on its hearings from national media coverage.<sup>32</sup> This, in turn, feeds the widespread notion among the general public that the Court is, indeed, the best symbol of Canadian justice. Some national polling indicates that the Court is not only the most recognised judicial institution, but that it is also one of the most trusted government institutions in Canada.<sup>33</sup> Indeed, you might argue that, in terms of its sheer symbolic value, the Court has even eclipsed parliament as the body most identified with protecting Canada's constitutional traditions. As the current Chief Justice of the Supreme Court noted in a documentary, the promulgation of the Charter promoted the idea of a constitutional democracy in Canada, at the expense of a parliamentary one (CPAC, 2016).

32 In *The Last Word*, the authors describe something similar in the coverage in the Israeli media of that country's Supreme Court: 'The next visual would show the Supreme Court. Here there would be a specific sequence of shots moving from exterior to interior. In most cases the first shots showed the building's façade (emphasis added), followed by interior shots of the judges and the courtroom' (Sauvageau *et al.*, 2006, p. 222).

33 See the 2001 study by Joseph Fletcher and Paul Howe, *Public Opinion and the Courts* (Fletcher *et al.*, 2000, pp. 260–264).

This apparent familiarity notwithstanding, the atmosphere of the Court building may strike some observers as rather severe and increasingly museum-like. I cannot help but observe that, in a very meaningful, if not a legal sense, they might be correct. This may be a reflection of a much wider phenomenon that has been described by Mulcahy as a process of ‘dematerialization’ of the courtroom. Due mainly to technological, economic and administrative factors, the concept of a highly visible, architecturally significant courthouse seems less and less relevant in a modern judiciary (Mulcahy, 2011, p. 163).

Others have observed the current tendency among certain judiciaries towards removing proceedings from the courtrooms and, more worryingly, from the public eye, owing to an increase in secret hearings, carried out ostensibly to protect matters of national security.<sup>34</sup> Hence, in many modern legal systems, ‘the showcase courtrooms have grown larger but are often devoid of any action, while the dense, high volume administrative work takes place in less well-appointed and less readily visited places’ (Resnik and Curtis, 2011, p. 376). Therefore, given the enormous hurdles, whether financial, legal or security, that need to be overcome for appeals to actually be heard there, it would seem fair to ask the question: is the Supreme Court of Canada becoming what critical legal scholars might describe as a symbol of a court? As Resnick and Curtis put it, ‘today’s grand courthouses are not only symbolic of government authority but, as they become empty of the business of judging and evolve into museums for school children and destinations for tourists, they are becoming symbols for courts’ (Resnik and Curtis, 2011, p. 339). This may strike some readers as a rather sensational argument. Admittedly, it is a provocative question that I raise for the purposes of future discussions on the place occupied by constitutional courthouses both in the legal culture of Canada and beyond.

There are other problems with the visual representation of justice portrayed by the Court. It does not reflect the historical or modern cultural diversity of Canada. As I pointed out earlier in my analysis, the coat of arms throughout the building reflects Canada’s traditional conception of itself as being the product of a dualist or multinational pact between British and French settlers in North America. This colonial version of history, however, omits a crucial fact with regard to not only Canadian history, but the Court’s very own geographical location. The Supreme Court of Canada, indeed the entire city of Ottawa, is built on unceded First Nation’s territory (the Algonquian/Omàmiwinini peoples, to be more precise).<sup>35</sup>

Mulcahy discusses the difficult colonial past inherent specifically in courthouse depictions of justice in Canada and European settler societies more generally, and the ways in which colonial legal institutions were used historically to legitimise violence against indigenous peoples:

‘The courthouse exercised a similarly foundational role in the projection of Canadian colonial and British imperial force: being central to the redefinition of land title, commercial contract and legislative process. The buildings were among the first major structures erected in new settlements and the backdrop to important ceremonies of governance.’ (Mulcahy, 2011, p. 11)

The current situation at the Court is rather paradoxical when one considers how much the Court has done to promote the status of indigenous rights through the establishment of certain doctrines and

34 For a Canadian example of this, consider the case of Mohamed Harkat involving security certificate system (*Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, (2014) 2 S.C.R. 33). Fine (2013).

35 ‘The Algonquin are aboriginal peoples in Canada, whose home communities are located in western Quebec and adjacent Ontario, centering on the Ottawa River and its tributaries ... many communities remain active in fighting for aboriginal rights with ongoing treaty negotiations between the Algonquins in Ontario and the governments of Ontario and Canada. The negotiations represent an acknowledgement that Algonquin peoples never signed a treaty with the Crown, and thus are entitled to lay claim to land never surrendered’ (Black, 2007).

precedents in Canadian jurisprudence.<sup>36</sup> Furthermore, said rights are, to some extent, protected by section 25<sup>37</sup> of the Charter. Moreover, in Part II of the Constitution Act, indigenous rights receive even greater protection under section 35, which states that ‘existing Aboriginal and treaty rights of the peoples of Canada are hereby recognized and affirmed’ (The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11).

Yet, that not a single mention of this historical grievance is made anywhere nor are indigenous peoples represented symbolically or permanently in any accessible or visible part of the Court seems like a lack of sensitivity on the part of the current Court administration and should be rectified. Indeed, such a gesture would go some way towards the decolonisation of the space.

By the same token, we find no visual representations of Canada’s much-celebrated multiculturalism – another pluralistic legal institution that the Court is often associated with upholding,<sup>38</sup> as well as being specifically guaranteed by the Charter.<sup>39</sup>

This is not simply an aesthetic issue, or a matter of political correctness. In a metaphorical sense, it represents a problem of democracy. As Resnik and Curtis note in their analysis of courthouse designs, democratic values inform our views of the way that society should be reflected in legal architecture. Hence, ‘once we all became eligible to be participants in all roles in courts, challenges emerge about how to mark a space as truly welcoming of all persons’ (Resnik and Curtis, 2011, p. 228).

What lessons does a study of the Supreme Court of Canada’s iconography and symbolism yield for the legal scholar? The Court building that Cormier and others created to house and project its authority are remarkable in size, scale and design. As such, it may very well reflect the way that most Canadians interact and comprehend the institution of law and continue to perceive the Supreme Court’s role as the pinnacle of that institution in Canada.

Having said this, it is necessary to draw a distinction between such popular notions of justice and the conclusions jurists can draw from the Court’s representation of Canadian justice in a critical inquiry of this nature.

As I have noted in this paper, the problem of the lack of pluralism and diversity (e.g. no representations of indigenous culture) in the actual legal iconography and symbolism of the Court presents both a democratic challenge and a metaphorical puzzle. It is only fitting that indigenous peoples be exemplified in some symbolic and meaningful way in the Court’s present environment if this situation is to be improved. Otherwise, such issues will continue to be problematic, and it will remain difficult to maintain, as many both inside and outside the judiciary do today (McKenna, 2016), that the Court’s legal architecture and its imagery of justice are the best incarnation of Canada’s democratic, pluralist, modern, historical, constitutional, legal, cultural and social institutions.

36 See e.g. *R. v. Van Der Peet* [1996] 2 SCR 507; 137 DLR (4<sup>th</sup>) 289; *Delgamuukw v. British Columbia* [1997] 3 SCR 1010; 153 DLR (4<sup>th</sup>) 193; and *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44; [2014] 2 S.C.R. 256 – all cases that established the possibility of indigenous land title being granted despite the absence of written, cartographical and other documentary evidence for such claims.

37 Section 25 of the Charter reads: ‘The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada’.

38 See e.g. *R. v. Big M Drug Mart Ltd.*, 1985, [1985] 1 S.C.R. 295 [WWW Document], Quicklaw, Available at: URL <https://advance.lexis.com/document/documentlink/?pdmfid=1505209&crd=939f9c0c-3c9b-4488-85a8-375575addc05&pdlinktype=Document&pdldocfullpath=%2Fshared%2Fdocument%2Fcases-ca%2Furn%3AcontentItem%3A5F8T-N3T1-JJSF-236F-00000-00&pdcontentcomponentid=281150&action=linkdoc&ecomp=15xfk&prid=8384cf23-825e-4fef-9485-88f96df633e6> (accessed 4 March 2017).

39 See section 27 of ‘The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11’, n.d.).

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